

LAW OFFICES  
**MILES & STOCKBRIDGE**

A PROFESSIONAL CORPORATION

CAMBRIDGE, MD  
COLUMBIA, MD  
EASTON, MD  
FREDERICK, MD

10 LIGHT STREET  
BALTIMORE, MARYLAND 21202-1487  
TELEPHONE 410-727-6464  
FAX 410-385-3700

McLEAN, VA  
ROCKVILLE, MD  
TOWSON, MD  
WASHINGTON, D.C.

JOHN A. STALFORTH  
410-385-3424

December 10, 1998

RECORDATION NO. 21866-AB FILED

DEC 11 '98

1-26 PM

via FEDERAL EXPRESS

Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001  
Attention: Mrs. Janice Fort

Re: Our File No.: 258-1903

Dear Mrs. Fort:

Enclosed for recordation as ~~primary~~ <sup>secondaries</sup> documents pursuant to the provisions of 49 U.S.C. §11301 are one original and one notarized copy of the following document:

Amendment to Lease with Trust Agreement entered into as of the 16<sup>th</sup> day of September, 1998 by and between Railcar, Ltd. (Suite 315, 1819 Peachtree Road, N.E., Atlanta Georgia 30309) and RailTex, Inc. (4040 Broadway, Suite 200, San Antonio, Texas 78209)

Also enclosed for recordation as a secondary document pursuant to the provisions of 49 U.S.C. §11301(a) are one original and one notarized copy of the following document:

Assignment of Lessor's Interest in Lease made as of November 30, 1998 by Railcar, Ltd. (Suite 315, 1819 Peachtree Road, N.E., Atlanta, Georgia 30309) and Progress Rail Services Corporation (P.O. Box 1037, Albertville, Alabama 35950) in favor of The First National Bank of Maryland (25 South Charles Street, Baltimore, Maryland 21201) which relates to the above-referenced Amendment to Lease with Trust Agreement

Also enclosed is a check to cover the costs of recording the enclosed documents.

Upon recordation, please return the recorded documents to the undersigned.

Thank you for your prompt attention to this matter. If you have any questions, please call me at (800) 344-2532.

Sincerely,

A handwritten signature in cursive script, reading "Michele E. Sperato". The signature is written in dark ink and is positioned above the printed name.

Michele E. Sperato  
Assistant to John A. Stalfort

Enclosures

RECORDATION NO. 21866-A FILED

DEC 11 '98

1-26PM

STATE OF MARYLAND

SS:

CITY OF BALTIMORE

THIS IS TO CERTIFY that the attached Amendment to Lease with Trust Agreement is a true and complete copy of said Amendment to Lease with Trust Agreement.

WITNESS my hand and seal this 10<sup>th</sup> day of December, 1998.

Michelle E. Sperato  
Notary Public

My Commission Expires: January 28, 2001

**AMENDMENT TO LEASE WITH TRUST AGREEMENT** 11 '98

1-26 PM

***THIS AMENDMENT TO LEASE WITH TRUST AGREEMENT*** is made and entered into as of the 16th day of September, 1998, by and between RAILCAR, LTD., ("LTD") acting as principal and/or agent for owners and RAILTEX, INC. ("LESSEE").

**WITNESSETH**

***WHEREAS***, LTD and Lessee have entered into that certain Lease With Trust Agreement dated as of December 28, 1985 respecting the lease of eight hundred four (804) boxcars (the "Lease"); and

***WHEREAS***, the parties wish to amend the Lease as hereinafter provided;

***NOW, THEREFORE***, in consideration of the premises and the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, the parties hereto hereby do agree as follows:

A. Except as otherwise defined in this Amendment, all capitalized terms used in this Amendment shall have the same meaning ascribed thereto in the Lease.

B. Section 3 ("Rent") of the Lease is hereby deleted in its entirety and the following is substituted in lieu thereof:

3. **Rent.**

a. LESSEE agrees to pay or cause to be paid the rent to LTD for the use of the Cars as follows:

(i) LTD shall receive all payments made or due to or with respect to three of LESSEE's shortlines, the South Carolina Central Railway, the Missouri & Northern Arkansas Railroad and the Grand Rapids Eastern Railroad, under the Interchange Rules by other railroad companies or any other party for or during or in connection with the possession, use or handling of the Cars and collected by LESSEE (or its shortlines) or LESSEE's car hire agent, which the parties agree shall initially be Railcar Management, Inc. ("RMI") for the South Carolina Central Railroad and the Grand Rapids Eastern Railroad. Initially the car hire collection and accounting for the Missouri & Northern Arkansas Railroad will be handled internally by LESSEE. The payments LTD shall receive include but are not limited to mileage and hourly car hire payments under applicable ICC and/or AAR Car Hire provisions plus storage charges LESSEE charges its customers for storing product in the Cars (all of which payments made to LESSEE and its shortlines are herein collectively referred to as "payments"). Notwithstanding any provision herein to the contrary, LESSEE shall be responsible for immediately paying to LTD any hourly and mileage

car hire earnings not paid to LESSEE (or its shortlines) because a railroad company or other party claims an offset against LESSEE (or its shortlines) or for which LESSEE receives an economic benefit. Lessee shall cause and shall be responsible for all payments received by LESSEE (or its shortlines) or LESSEE's car hire agent respecting the Cars to be held in trust (and shall not be commingled with LESSEE's own funds or general assets) for the benefit of LTD.

(ii) During the entire term of the Lease, commencing December 28, 1995, the Cars will be car hire free to all of LESSEE's shortline railroads.

(iii) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules--Freight and the appropriate amount due as a result thereof is received by LTD, the damaged or destroyed Car will be removed from the requirement to pay rental under this Lease as of the date of the casualty, although LTD will be entitled to all payments earned up to and including said date. The parties agree that LTD may at its discretion replace damaged or destroyed Cars with like equipment.

(iv) LTD agrees to use its best efforts to deprescribe those Cars which had not been deprescribed by the previous owner, Norfolk Southern ("NS"). Subject to the Cars being deprescribed, LESSEE agrees to use its best efforts, including a "best and final" offer if necessary, to arrange for all railroads who use the Cars to agree to pay a minimum hourly rate of \_\_\_\_\_ ) and a minimum per mile rate of \_\_\_\_\_.

Without such agreements, under current AAR Car Hire provisions, the Cars would only earn \_\_\_\_\_ per hour in per diem and \_\_\_\_\_ per mile for mileage. Notwithstanding the foregoing, commencing with the service month of January 1999, until the termination of the Lease, LESSEE shall use its best efforts to arrange for all railroads who use the Cars while off LESSEE's railroads, to agree to pay a minimum hourly rate of \_\_\_\_\_ per hour and a minimum mileage rate of \_\_\_\_\_ per mile. To the extent that \_\_\_\_\_ of the actual hourly and mileage rates paid by other carriers are less than these minimum rates, LESSEE agrees to pay to LTD any such shortfall within 30 days following the month when such payments were collected. LESSEE shall not authorize any type of reclaim or other arrangement which would reduce the earnings of the Cars, and shall immediately pay to LTD any reclaims or reduction.

(v) Rental payments shall not be subject to any setoff, withholding, abatement or deduction of any nature except as expressly permitted in this Lease.

C. Section 7 of the Lease is hereby deleted in its entirety and the following is substituted in lieu thereof:

7. Repair Work. Except for running repairs or as otherwise provided herein, LTD shall authorize or cause to be performed all Repair Work. LTD shall bear all

cost including reclaims incidental to such Repair Work. LTD shall at its sole cost and expense perform or cause to be performed all Repair Work except for repairs to the doors or door opening caused by LESSEE's shippers or consignees (which shall be for the account of LESSEE). To avoid the determination of responsibility for door and door opening repairs from being a labor intensive task, the parties agree that all expenses for repairs to the door and door openings (all mutually agreed upon AAR job codes) shall be deemed the responsibility of LESSEE and LTD in equal shares of each. LESSEE shall also at its sole cost and expense perform or cause to be performed all Repair Work received by LESSEE or its shortlines and reclaims required by reason of LESSEE's negligence or intentional act. To the extent LESSEE has repairs made to the Cars by a repair contractor or LESSEE's own shop, LESSEE agrees to bill LTD for the actual cost as billed by the contractor or, if the work is done in LESSEE's own shop, at labor rates not to exceed of the current AAR billing rates. LESSEE will immediately forward to LTD all notices, communications or invoices relating to Repair Work and take no action with respect thereto without LTD's express consent. LTD, at its expense, may require LESSEE to return Cars for preventive maintenance or Repair Work. LTD may, at LTD's discretion, replace or withdraw any Car which LTD in its sole discretion deems uneconomical for Repair Work of any kind. LTD shall have no responsibility for Repair Work until informed of the need therefor. LESSEE agrees to get prior authorization from LTD before permitting any repairs to be made to the Cars.

D. The first sentence of Section 9 of the Lease (which section is entitled "Insurance and Taxes") is hereby replaced with the following:

Except as provided herein, LESSEE shall, during the term of this Lease and at its expense, carry and maintain public liability insurance in respect of the Cars in such amounts and with such terms as are customary under LESSEE's risk management program in respect of similar equipment owned or leased by Lessee; provided, however, that notwithstanding the foregoing, LESSEE may self-insure in a manner customary under LESSEE's risk management program. Except as provided herein, LTD shall, during the term of this Lease and at its expense, carry and maintain physical damage insurance in respect of the Cars in such amounts and with such terms as are customary under LTD's risk management program in respect of similar equipment owned or leased by LTD; provided, however, that notwithstanding the foregoing, LTD may self-insure in a manner customary under LTD's risk management program.

E. The sentence of Section 10(c) is hereby deleted and the following sentence is substituted in lie thereof:

10. Termination of Lease.

c. LTD shall have the right to terminate this Lease with respect to all or a group of Cars or any single Car if the average per diem earned by such Car or a

group of Cars is less than           , per Car per month (the "Minimum Utilization").

F. There is hereby added a new Section 17, reading as follows:

17. Special Provisions Concerning Cars Transferred to The First National Bank of Maryland. With respect to the Cars identified on the two exhibits attached hereto entitled, "Description of Railcars" (the "Subject Cars") (which Cars, together with the Lease to the extent relating to those Cars, are being transferred by LTD and Progress Rail Services Corporation to The First National Bank of Maryland), the following provisions shall apply:

- a. Independent Exercise of Rights and Remedies of Lessor. LTD (and its successors as lessor) may exercise the rights and remedies of LTD hereunder independent of the other cars that are subject to the Lease, as though there were separate leases, one relating to the Subject Cars and the other relating to the other cars. In particular, without limiting the generality of the preceding sentence, (i) LTD (and its successors as lessor) may declare a default, terminate the Lease, and/or exercise other rights and remedies with respect to the Subject Cars, without being required also to declare a default, terminate the Lease, etc. with respect to cars other than the Subject Cars, and (ii) LTD (and its successors as lessor) may declare a default, terminate the Lease, and/or exercise other rights and remedies with respect to Cars other than the Subject Cars, without being required also to declare a default, terminate the Lease, etc. with respect to the Subject Cars.
- b. Past Due Payments. Any nonpayment or rentals or other sums due hereunder, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the LESSEE to pay also an amount of interest equal to           per annum of such overdue sum for the period of time such sum is overdue and unpaid.

G. Except as expressly set forth in this Amendment, the Lease shall continue in full force and effect.

*[SIGNATURES ON FOLLOWING PAGE]*

**IN WITNESS WHEREOF**, LTD and LESSEE have duly executed this Amendment as of the day and year first above written.

**RAILCAR, LTD.**

By: Wilds L. Pierce  
Wilds L. Pierce, President

Attest: B. Thomas Lockett

Name/Title: B. Thomas Lockett / Controller

[CORPORATE SEAL]

**RAILTEX, INC.**

By: Joseph P. Janke

Name/Title: JOSEPH P. JANKE  
VP - CFO

Attest: Stella V. Cortez

Name/Title: STELLA V. CORTAZ  
FRT CAR ADM

[CORPORATE SEAL]

STATE OF GEORGIA  
COUNTY OF FULTON

On this 25<sup>th</sup> day of November, 1998, before me personally appeared Wilds L. Pierce, to me personally known, who being by me duly sworn says that he is President of Railcar, Ltd. and ~~Eugene N. Martini~~ B.T. Thomas ~~Controller~~ Executive Vice President of Railcar, Ltd., and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

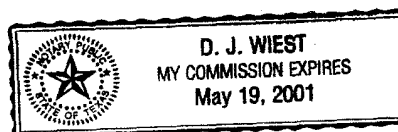
Carol B. Stephens  
Notary Public  
My commission expires:  
[NOTARIAL SEAL]



STATE OF TEXAS  
COUNTY OF BEXAR

On this 24<sup>th</sup> day of NOVEMBER, 1998, before me personally appeared JOSEPH P. JAHNKE, to me personally known, who being by me duly sworn says that he is VP-CFO of RailTex, Inc. and \_\_\_\_\_, to me personally known, being by me duly sworn says that he is \_\_\_\_\_ of RailTex, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

D. J. Wiest  
Notary Public  
My commission expires:  
[NOTARIAL SEAL]



## DESCRIPTION OF RAILCARS

Lessee: RAILTEX

Number of Cars in Lease: 167

Description of Cars: 60 foot, 70-ton, plate B, Plug Door, Boxcars

Car Assignment: Missouri and Northern Arkansas Railroad

Car Marks and Numbers:

Current Mark & Number	Previous Mark & Number	Built Date	Notes
MNA 3100, MNA 3101, MNA 3105, MNA 3107, MNA 3109, MNA 3110, MNA 3111, MNA 3112, MNA 3113, MNA 3118, MNA 3119, MNA 3121, MNA 3123, MNA 3124, MNA 3125, MNA 3126, MNA 3127, MNA 3129, MNA 3132, MNA 3134, MNA 3135, MNA 3137, MNA 3139, MNA 3140, MNA 3142, MNA 3144, MNA 3146, MNA 3147, MNA 3151, MNA 3152, MNA 3154, MNA 3156, MNA 3158, MNA 3159, MNA 3160, MNA 3163, MNA 3164, MNA 3166, MNA 3167, MNA 3169, MNA 3170, MNA 3175, MNA 3176, MNA 3178, MNA 3179, MNA 3180, MNA 3181, MNA 3182, MNA 3183, MNA 3184, MNA 3186, MNA 3187, MNA 3188, MNA 3189, MNA 3190, MNA 3191, MNA 3192, MNA 3194, MNA 3195, MNA 3197, MNA 3198, MNA 3200, MNA 3202, MNA 3204, MNA 3205, MNA 3207, MNA 3209, MNA 3210, MNA 3211, MNA 3212, MNA 3213, MNA 3214, MNA 3216, MNA 3217, MNA 3219, MNA 3220, MNA 3221, MNA 3223, MNA 3224, MNA 3225, MNA 3227, MNA 3230, MNA 3231, MNA 3232, MNA 3234, MNA 3235, MNA 3236, MNA 3237, MNA 3238, MNA 3239, MNA 3240, MNA 3241, MNA 3242, MNA 3246, MNA 3248, MNA 3256, MNA 3258, MNA 3259, MNA 3260, MNA 3264, MNA 3265, MNA 3270, MNA 3271, MNA 3273, MNA 3276, MNA 3277, MNA 3279, MNA 3280, MNA 3281, MNA 3282, MNA 3286, MNA 3287, MNA 3291, MNA 3294, MNA 3295, MNA 3296, MNA 3297, MNA 3299, MNA 3300, MNA 3302, MNA 3304, MNA 3305, MNA 3307, MNA 3310, MNA 3313, MNA 3316, MNA 3319, MNA 3321, MNA 3322, MNA 3323, MNA 3325, MNA 3326, MNA 3328, MNA 3329, MNA 3330, MNA 3333, MNA 3335, MNA 3336, MNA 3337, MNA 3338, MNA 3339, MNA 3340, MNA 3342, MNA 3343, MNA 3345, MNA 3347, MNA 3348, MNA 3349, MNA 3350, MNA 3352, MNA 3353, MNA 3356, MNA 3358, MNA 3359, MNA 3360, MNA 3363, MNA 3367, MNA 3371, MNA 3372, MNA 3375, MNA 3377, MNA 3379, MNA 3380, MNA 3381, MNA 3383, MNA 3384, MNA 3385			

## DESCRIPTION OF RAILCARS

Lessee: RAILTEX

Number of Cars in Lease: 52

Description of Cars: 50 foot, 70-ton, Plate B; Plug Door, Boxcars

Car Assignments: South Carolina Central Railroad Co. Inc.  
Carolina Piedmont Division, South Carolina Central Railroad Co. Inc.

Car Marks and Numbers:

SCRF 3061, SCRF 3062, SCRF 3063, SCRF 3064, SCRF 3065, SCRF 3066,  
SCRF 3067, SCRF 3400, SCRF 3401, SCRF 3403, SCRF 3404, SCRF 3405,  
SCRF 3406, SCRF 3407, SCRF 3408, SCRF 3409, SCRF 3410, SCRF 3411,  
SCRF 3412, SCRF 3413, SCRF 3414, SCRF 3415, SCRF 3416, SCRF 3417,  
CPDR 3418 SCRF 3419, SCRF 3420, SCRF 3421, SCRF 3422, SCRF 3423,  
SCRF 3424, CPDR 3425 SCRF 3426, SCRF 3427, SCRF 3428, SCRF 3429,  
SCRF 3431, SCRF 3432, SCRF 3433, SCRF 3434, SCRF 3435, CPDR 3436  
SCRF 3437, SCRF 3438, SCRF 3439, CPDR 3440, SCRF 3441, SCRF 3442,  
CPDR 3443, SCRF 3444, SCRF 3445, SCRF 3447.